

Ross/Western, Inc. and Brotherhood of Painters and Allied Trades Local Union No. 567, International Brotherhood of Painters and Allied Trades Union. Case 32-CA-12255

May 27, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on December 24, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Ross/Western, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On April 27, 1992, the General Counsel filed a Motion for Summary Judgment. On April 30, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated April 15, 1992, counsel for the General Counsel notified the Respondent that unless an answer was received by the close of business April 23, 1992, a Motion for Summary Judgment would be filed with the Board. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Arizona corporation with an office and place of business in South Lake Tahoe, California, has been engaged in business as a drywall contractor in the construction industry. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 directly to customers located outside the State of Arizona. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since on or about May 13, 1991, and at all relevant times, the Union has been recognized by the Respondent as the designated exclusive collective-bargaining representative of the Respondent's employees in the following bargaining unit:

All full-time and regular part-time employees described in and covered by the collective bargaining agreement between the Union and the Respondent effective by its terms from July 1, 1989 to June 30, 1992, excluding all other employees, guards and supervisors as defined in the Act.

The Respondent recognized the Union pursuant to Section 8(f) of the Act and, at all times since May 13, 1991, and during the term of the above agreement, the Union, by virtue of Section 8(f) and Section 9(a) of the Act, has been and is the unit employees' limited exclusive representative for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.¹

Under the parties' current agreement, the Respondent is required to make payments on behalf of employees to a health and/or dental and/or vision benefit trust or plan, a pension trust or plan, and an apprenticeship program. The agreement further contains a dues and initiation fee checkoff provision for those employees who are or wish to become union members, and requires the Respond-

¹ Under *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf'd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), an 8(f) signatory union does not acquire full 9(a) status based solely on an employer's adoption of an 8(f) agreement. As it is clear from the complaint allegations that the bargaining relationship between the parties was entered into pursuant to Sec. 8(f), we find that the Union is the limited exclusive representative of the Respondent's unit employees. Id. at 1386-1387.

ent to submit monthly remittance forms from which the Union can determine the amounts that are due from the Respondent with respect to the above trusts or plans, the apprenticeship program, and the checkoff provision. The agreement also contains a grievance procedure (art. XXIX) for the voluntary adjustment and/or arbitration of disputes arising under the agreement.

Beginning in or about August and September 1991, respectively, and continuing to date, the Respondent, without the Union's consent, failed and refused to make the required payments to the trusts or plans, and failed and refused to make the required payments to the apprenticeship program and to remit to the Union the dues and initiation fees checked off from employees' wages pursuant to the checkoff provision of the agreement. Also, beginning in or about November 1, 1991, and continuing to date, the Respondent failed and refused to remit to the Union the monthly remittance forms required by the agreement.

On or about October 22, 1991, the Union, pursuant to article XXIX of the agreement, filed a grievance on behalf of certain unit employees and, at various times from October 22, 1991, through on or about January 24, 1992, requested that Respondent meet for the purpose of adjusting or arbitrating the grievance. Since on or about October 22, 1991, the Respondent has failed and refused, and continues to fail and refuse, to meet with the Union regarding the grievance, thereby negating and effectively abrogating the contractual grievance procedure.

We find that by engaging in the above conduct, the Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged.

CONCLUSIONS OF LAW

By failing and refusing, without the Union's consent, to make payments on behalf of employees to the health and/or dental and/or vision benefit trust or plan, the pension trust or plan, and the apprenticeship program, failing and refusing to remit to the Union dues and initiation fees that have been checked off from employees' wages, failing and refusing to remit monthly remittance forms to the Union, and failing and refusing to meet with the Union to discuss a grievance, as required by the terms of its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to abide by the terms of its collective-bargaining agreement with the Union by making payments to the health and/or dental and/or vision benefit trust or plan and to its pension trust or plan that have not been made since in or about August 1991, and by making payments to the apprenticeship program that have not been made since in or about September 1991.² We shall also order the Respondent to make whole all unit employees for any expenses they may have incurred because of its unlawful failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, the Respondent shall be ordered to remit the dues and initiation fees that have been checked off from employees' wages but not forwarded to the Union since about September 1991, with interest as prescribed in *New Horizons for the Retarded*, supra, and to remit to the Union the monthly remittance forms that have not been forwarded since about November 1991.

Finally, the Respondent shall be directed to meet with the Union to discuss the grievance filed by the Union on or about October 22, 1991, pursuant to the grievance procedure set forth in article XXIX of the parties' agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Ross/Western, Inc., South Lake Tahoe, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to comply with the terms of its collective-bargaining agreement with Brotherhood of Painters and Allied Trades Local Union No. 567, International Brotherhood of Painters and Allied Trades Union, which is the limited exclusive bargaining representative of the Respondent's employees in an appropriate unit, by failing and refusing to make payments to the health and/or dental and/or vision benefit trust or plan, the pension trust or plan, and the apprenticeship program, fail-

² Any additional amounts applicable to those payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

ing and refusing to remit dues and initiation fees to the Union, failing and refusing to submit monthly remittance forms to the Union, and failing and refusing to meet to discuss a grievance as required by article XXIX of the agreement. The appropriate bargaining unit consists of:

All full-time and regular part-time employees described in and covered by the collective bargaining agreement between the Union and Respondent effective by its terms from July 1, 1989 to June 30, 1992, herein called the Agreement; excluding all other employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of its collective-bargaining agreement with the Union by making payments to the health and/or dental and/or vision benefit trust or plan, and to the pension trust or plan, that have not been made since in or about August 1991, and by making payments to the apprenticeship program that have not been made since in or about September 1991, and make unit employees whole for any expenses they may have incurred because of the Respondent's failure to make such payments, with interest as described in the remedy section of this decision.

(b) Remit to the Union all dues and initiation fees that were checked off from employees' wages but that have not been forwarded to the Union since in or about September 1991, with interest, and remit to the Union the monthly remittance forms that have not been sent since in or about November 1991.

(c) Comply with the grievance procedure of article XXIX of the contract by meeting with the Union and discussing the grievance filed by the Union on or about October 22, 1991.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in South Lake Tahoe, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided

by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to comply with our collective-bargaining agreement with Brotherhood of Painters and Allied Trades Local Union No. 567, International Brotherhood of Painters and Allied Trades Union, which is the limited exclusive collective-bargaining representative of our employees in an appropriate bargaining unit, by failing and refusing to make required payments to the health and/or dental and/or vision benefit trust or plan, the pension trust or plan, the apprenticeship program, failing and refusing to remit to the Union the dues and initiation fees we have deducted from our employees' wages, and by not remitting to the Union the monthly remittance forms as required by the contract, and by refusing to meet with the Union to discuss a grievance as required under article XXIX (grievance procedure) of the contract. The appropriate bargaining unit consists of:

All full-time and regular part-time employees described in and covered by the collective bargaining agreement between the Union and Respondent effective by its terms from July 1, 1989 to June 30, 1992, herein called the Agreement; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of our agreement with the Union by making payments to the health and/or dental and/or vision benefit trust or

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ing and refusing to remit dues and initiation fees to the Union, failing and refusing to submit monthly remittance forms to the Union, and failing and refusing to meet to discuss a grievance as required by article XXIX of the agreement. The appropriate bargaining unit consists of:

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(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of its collective-bargaining agreement with the Union by making payments to the health and/or dental and/or vision benefit trust or plan, and to the pension trust or plan, that have not been made since in or about August 1991, and by making payments to the apprenticeship program that have not been made since in or about September 1991, and make unit employees whole for any expenses they may have incurred because of the Respondent's failure to make such payments, with interest as described in the remedy section of this decision.

(b) Remit to the Union all dues and initiation fees that were checked off from employees' wages but that have not been forwarded to the Union since in or about September 1991, with interest, and remit to the Union the monthly remittance forms that have not been sent since in or about November 1991.

(c) Comply with the grievance procedure of article XXIX of the contract by meeting with the Union and discussing the grievance filed by the Union on or about October 22, 1991.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in South Lake Tahoe, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided

by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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plan, and to the pension trust or plan, that have not been made since in or about August 1991, and by making payments to the apprenticeship program that have not been made since in or about September 1991, and WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure to make such payments, with interest.

WE WILL remit to the Union dues and initiation fees that were deducted from employees' wages and that have not been forwarded to the Union since in or about November 1991, with interest.

WE WILL remit to the Union the monthly remittance forms that have not been sent to the Union since in or about November 1991, as required by the contract.

WE WILL comply with the grievance procedure of article XXIX of the contract by meeting with the Union and discussing the grievance filed by Union on or about October 22, 1991.

ROSS/WESTERN, INC.